

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7725

Petition of Telephone Operating Company of Vermont)
LLC, d/b/a FairPoint Communications, for Amendment)
to the Vermont Performance Assurance Plan and for)
Approval of Alternative Use of Mode of Entry ("MOE"))
Payments)

Docket No. 7726

Petition of Telephone Operating Company of Vermont)
LLC, d/b/a FairPoint Communications, for Approval of)
Alternative Use of Penalty Payments Under the Retail)
Service Quality Plan)

Order entered: 4/14/2011

PREHEARING CONFERENCE MEMORANDUM

The Vermont Public Service Board ("Board") convened a Prehearing Conference in these proceedings on April 6, 2011. The following appearances were entered: Peter H. Zamore, Esq., Sheehy Furlong & Behm, P.C., and Patrick McHugh, Esq., for Telephone Operating Company of Vermont LLC, d/b/a FairPoint Communications ("FairPoint"); James Porter, Esq., for the Vermont Department of Public Service ("Department"); Karen Tyler, Esq., Dunkiel Saunders Elliott Raubvogel Hand, for Comcast; and Lawrence Lackey for National Mobile Communications, Inc., d/b/a Sovernet Communications ("Sovernet").

A. SCHEDULE

FairPoint proposed a schedule for this proceeding to which all parties agreed. The Board accepts FairPoint's proposal; the following schedule shall apply.

April 20, 2011	Deadline for Intervention
April 26	Parties Respond to Intervention Requests

April 29	Parties File List of Factual Issues or Stipulation of Facts
May 13	FairPoint Files Testimony
May 20	Parties File Discovery Requests Upon FairPoint and Department
June 3	FairPoint Responds to Discovery Requests
June 17	Parties Other Than FairPoint File Testimony
June 24	Parties File Discovery Requests on June 17 Testimony
July 11	Parties File Responses to Testimony
July 14	Evidentiary Hearing

If the parties file a Stipulation of Facts on April 29, the parties proposed that the remainder of the schedule would be truncated so that parties would file briefs on May 13 and reply briefs on May 27. At this time, we do not adopt this portion of the proposed schedule, primarily because it might be necessary to have a hearing even in the event of a Stipulation to examine the two issues raised by the Board during the prehearing conference. If the parties file a Stipulation, the Board will establish a new schedule for proceedings and may schedule a Status Conference.

B. QUESTIONS FOR FAIRPOINT AND THE DEPARTMENT

The Board also outlined questions that FairPoint, the Department, and other parties should address in testimony. For clarity, these are repeated below.

1. FairPoint's proposal states that all expenditures will be incremental to existing regulatory commitments. However, by the time FairPoint begins to implement the proposal, no specific commitments will remain, particularly on the list of towns included in the proposal. FairPoint has previously stated that it intended to continue expanding its broadband deployment in Vermont. If FairPoint uses the funds from its proposals to displace capital that it would have spent anyway for broadband expansion, FairPoint's proposal might benefit its shareholders rather than Vermont residents presently without broadband services. Please explain how the Board can be assured that the \$6.6 M will be incremental investment in broadband rather than displacing other funds that FairPoint may have chosen to expend to deliver broadband to presently unserved areas.

2. The Board has been provided with no information on the cost of broadband expansion and in which specific communities it will occur — these decisions have been left to FairPoint's sole discretion. How can we be assured that expenditures will be to optimal effect? Will the funds be directed towards communities where FairPoint's business case for using its own capital is weakest? By comparison, FairPoint's (and its predecessor's) obligation to expand broadband services in Dockets No. 7142 and 7270 addressed these questions by including specific, objective benchmarks. Is there any reason why the Board should not require such benchmarks to be set in this case?

SO ORDERED.

Dated at Montpelier, Vermont, this 14th day of April, 2011.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 14, 2011

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)